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July 25, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 8, 2007

Case Number: TSO-0485

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual is eligible for access authorization. For the reasons detailed below, the Individual is not eligible at this time.

I. BACKGROUND

The Individual has worked for a DOE contractor for over five years and held a clearance. In February 2006, the Individual completed a Questionnaire for National Security Positions (QNSP). DOE Ex. 4. In December 2006, the LSO conducted a Personnel Security Interview (PSI). DOE Ex. 3.

During the PSI, the Individual discussed his financial status. He related the following. In the year 2000, the Individual wanted to clean up his credit. DOE Ex. 3 at 6. Beginning with the tax year 2001, the Individual overstated his income tax withholding allowances. *Id.* at 6-8. Then, he did not timely file federal or state income tax returns for the years 2000, 2001, and 2002. *Id.* at 8. In 2004, the Individual filed the delinquent federal returns, changed his withholding, and worked out a plan for repaying the \$25,000 he owed. *Id.* at 8-9. At the time of the PSI, he had reduced the indebtedness to \$13,000. *Id.* at 10. He had not however, filed state income returns for the years 2001 through 2005. *Id.* at 11. He had not done so because "a friend" told him

that the state would demand payment of the total amount due rather than agree to a payment plan. *Id.* at 9-10. He stated, however, that with his increased withholding and the tax benefits associated with his purchase of his house, he was actually building up a credit that could be used when he finally filed. *Id.* at 14. Finally, when asked to explain why he purchased a second car and motorcycle, he explained that the amounts they cost would not be enough to pay the "bulk payment" that he thought the state would require. *Id.* at 40-41.

In February 2007, the LSO issued a Notification Letter, citing information raising a security under 10 C.F.R. § 710.8(l) (Criterion L). The Notification Letter cited the intentional overstatement of tax withholding allowances, the failure to file federal and state income tax returns, and unnecessary consumer spending during the same period.

The Individual responded to the Notification Letter and requested a hearing. I was appointed to serve as the hearing officer. I held a pre-hearing conference and convened the hearing. At the hearing, DOE Counsel did not present any witnesses. The Individual, who was represented by counsel, testified and presented three witnesses - a psychologist and two former supervisors. The Individual also submitted documentation of his current financial status. After the hearing, the Individual supplemented the record with additional information concerning his financial status, as well as written testimonials from one of the former supervisors, and four colleagues and/or friends.

II. THE HEARING

A. The Individual

The Individual testified about his work as follows. Tr. at 43-49. He has followed the rules associated with his work and his clearance, and it never occurred to him that his "manipulation" of his taxes would affect his clearance. *Id.* at 49, 52.

The Individual testified that his failure to file his income tax returns and pay his taxes was "very poor judgment" and "tied in with my lack of financial knowledge" of "maintaining good credit." Tr. at 53. When he began work at DOE, he had "atrocious credit" with collections for an apartment and credit cards, and his "goal was to clear that up." *Id.* at 54. As a result, he did not file federal tax returns for the years 2000 through 2002 until 2004, and he did not file state tax returns for 2000 to 2005 until early 2007. *Id.* at 56. He acknowledged that during this period, he

purchased two automobiles and two motorcycles, but he stated that he intended to sell one of cars and one of the motorcycles but had not yet been able to do it. *Id.* at 74.

As to his current credit situation, the Individual testified that he has resolved all delinquencies, including "all the back taxes that I owed" and has been "working on getting my finances in order." *Tr.* at 54, 56. For the years 2003 onward, the Individual paid his current federal tax obligations and began reducing his past indebtedness through the combination of a payment plan and reporting zero withholding allowances on current years. *Id.* at 58. "Within the past year" he started making additional payments and then recently "took out a loan to pay off the remaining balance." *Id.* As for his state income taxes, the Individual stated that in January or February of 2007, he filed his state income tax returns for the years 2000 to 2006 and took out a loan to pay his back taxes - approximately \$5,000.

The Individual summarized his credit situation.

Well, I'd always had credit problems, and then coming to [the site] ... I was able to make a better paycheck and was able to pay off my outstanding debts, and it just clicked in me one day that I needed to do an even better job, so I just decided to clean up my act.

Id. at 60. The Individual testified that, while his poor credit was not discussed at the time of his hiring, it was brought up during his "L clearance" and he was told "[t]o clean it up." *Id.* at 62. The Individual testified that "it [financial delinquencies] would never happen again," citing the potential impact on his job. *Id.* at 62-63. As to financial management in general, he stated that the clinical psychologist had given him insight into impulse buying and the benefits of getting control over his spending. *Id.* at 62-65.

B. The Clinical Psychologist

The clinical psychologist testified that he evaluated the Individual in June 2007 and prepared a report. *Tr.* at 10. The report is part of the record in this case.

The clinical psychologist testified concerning his evaluation of the Individual. He attributed the Individual's financial difficulties to easy access to credit and lack of knowledge of financial management skills. *Tr.* at 11-12. The Individual did not

pay his taxes because he needed "breathing space financially." *Id.* at 12. The psychologist noted that, as of the time of the hearing, the Individual had filed his state income tax returns and paid the taxes that he owed. *Id.* at 12. Psychological tests showed no "underlying kind of psychology" that "would reveal some sort of difficulty." *Id.* at 13. The Personality Assessment Inventory and the Minnesota Multiphasic Personality Inventory (MMPI) showed "no elevations that would be considered to indicate any pathology." *Id.* at 17. The Rorschach test did not show any depression or indicators of bizarre or unusual thinking. *Id.* at 20. The Individual "learned his lesson," *id.* at 27, and there was no indication of "dishonesty, unreliability," *id.* at 30.

C. Former Supervisors

Former Supervisor 1 testified that he supervised the Individual during the years 2004 to 2006. *Tr.* at 92, 95. The Individual led an effort and was a "very good" employee. *Id.* at 92-93. The group never had a security fraction or any adverse audit findings. *Id.* at 93. The former supervisor found the Individual reliable and trustworthy. *Id.* at 98.

Former Supervisor 2 testified that he was a co-worker and then supervisor of the Individual during the years 2001 to 2004. *Tr.* at 102. The Individual got along well with others, exceeded expectations, and was trustworthy and reliable. *Id.* at 104-06.

III. APPLICABLE STANDARD

Under Part 710, certain types of information raise a concern about whether an individual is eligible for access authorization. Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the hearing officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the hearing officer must find that "the grant or restoration of access

authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

IV. ANALYSIS

Criterion L, in relevant part, refers to information indicating that an individual has

[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.

10 C.F.R. § 710.8(1). Such conduct includes "a pattern of financial irresponsibility."

The Adjudicative Guidelines provide examples of security concerns related to financial matters. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (the Adjudicative Guidelines). Guideline F, entitled "Financial Considerations," cites, *inter alia*, "a history of not meeting financial obligations," Guideline F(19)(c); "deceptive or illegal financial practices" such as "tax evasion," Guideline F(19)(d); and "failure to file annual Federal, state, or local income returns as required," Guideline F(19)(g).

The Notification Letter correctly concluded that the Individual had engaged in Criterion L conduct. It is undisputed that the Individual intentionally overstated his tax withholding allowances, failed to file federal and state income tax returns, and engaged in unnecessary consumer spending during the same period. For the years 2000 through 2002, the Individual reported an excessive number of allowances for federal and state income tax withholding; it was not until 2004 that he changed his withholding, filed his delinquent 2000 through 2002 federal tax returns, and worked out a payment plan. As of the time of the December 2006 PSI, the Individual had not filed state income tax returns for the years 2000 to 2005. In the meantime, the Individual purchased a house, cars and motorcycles. The foregoing circumstances raise a Criterion L concern. See 10 C.F.R. §710.8(1) (pattern of financial irresponsibility"); Guideline F(19)(c) ("a history of not meeting

financial obligations"); Guideline F(19)(d) ("deceptive or illegal practices"); F(19)(g) (failure to file income tax returns). See also *Personnel Security Review*, Case No. VSA-0300, 28 DOE ¶ 83,010, 86,536 (2000) (failure to file tax returns is a Criterion L concern).

Once a security concern is raised, an individual has the obligation to resolve the concern. In a case such as this, an individual can resolve the concern by demonstrating a reformed attitude and a pattern of responsible behavior. See, e.g., *Personnel Security Hearing*, Case No. TSO-0411, 29 DOE ¶ ____ (2007).

The Individual has taken steps to resolve the security concern. In 2004, the Individual stopped claiming excessive withholding allowances, filed his delinquent federal income tax returns, and worked out a payment plan to satisfy his federal income tax indebtedness. In early 2007, the Individual filed his delinquent state income tax returns, and he paid both his federal and state outstanding indebtedness. At the hearing, the Individual demonstrated a degree of insight concerning his prior spending. He testified that the clinical psychologist had helped him to recognize that he had been an impulse buyer and that he needed professional assistance in establishing a plan to manage his money. After the hearing, the Individual submitted a budget and a letter from a financial institution indicating that the Individual was receiving financial advice.

Although the Individual has taken the right steps to establish a pattern of responsible behavior, the pattern is not yet established.

The Individual filed his delinquent 2000 through 2005 state income tax returns in early 2007 - only six months ago and only after the delinquencies came to the attention of the LSO and were discussed in the December 2006 PSI. The Individual has not yet shown that he can live within his budget. Given the foregoing circumstances, I am unable to find a pattern of reliability with respect to filing income tax returns and meeting financial obligations.

V. CONCLUSION

The Individual has not resolved the Criterion L concern set forth in the Notification Letter. For that reason, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should not be restored at this time. Any party may seek review of this Decision

by an Appeal Panel under the procedures set forth at 10 C.F.R. §
710.28.

Janet N. Freimuth
Hearing Officer
Office of Hearings and Appeals

Date: July 25, 2007